Assembly Bill No. 2937

Passed the Assembly August 15, 2008

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Chief Clerk of the Assembly

Passed the Senate August 13, 2008

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2008, at _____ o'clock ___M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Section 340.6 of the Code of Civil Procedure, and to amend Sections 851.8, 4901, 4903, and 4904 of, and to add Sections 851.86 and 1203.95 to, the Penal Code, relating to wrongful convictions and arrests.

LEGISLATIVE COUNSEL'S DIGEST

AB 2937, Solorio. Wrongful convictions and arrests.

Under existing law, an action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services is required to be commenced within one year after the plaintiff discovers or should have discovered the facts constituting the wrongful act or omission, or 4 years from the date of the wrongful act or omission, whichever occurs first.

This bill would specify that if the plaintiff is required to establish his or her actual innocence of an underlying criminal charge as an element of his or her claim, the action is required to be commenced within 2 years after the plaintiff achieves postconviction exoneration in the form of a final judicial disposition of the criminal case.

Existing law authorizes certain persons to petition a law enforcement agency or a court for a finding of factual innocence and to have the record of his or her arrest destroyed upon that finding, as specified. Existing law makes a finding that an arrestee if factually innocent inadmissible as evidence in any action.

This bill would provide that a finding that a person is factually innocent is admissible as evidence at a hearing before the California Victim Compensation and Government Claims Board.

Existing law establishes procedures for a wrongfully convicted person to seek compensation against the state for the pecuniary injuries sustained by him or her through erroneous conviction and imprisonment. These procedures require the California Victim Compensation and Government Claims Board, if evidence shows the claimant sustained pecuniary injury through erroneous conviction and imprisonment, to report the facts of the case and its conclusion to the next Legislature, with a recommendation that

an appropriation be made by the Legislature for the purpose of indemnifying the claimant for the pecuniary injury, in a recommended amount of a sum equal to $100 per day of incarceration.

This bill would require the annual adjustment of that daily rate, commencing January 1, 2009, to reflect the cost-of-living in the year of the appropriation, as specified. The bill would extend the timeframe in which a person may bring a claim from 6 months to 2 years. The bill would also provide reentry assistance for any person whose criminal conviction was vacated by a court and who was released from custody as a result of the decision of the court to vacate the conviction, as specified. This bill would require every county board of supervisors to designate a local agency to assist a person with those reentry services, as specified. By requiring the county agencies to provide specified assistance to those persons, this bill would impose a state-mandated local program.

Under existing law, whenever a person is acquitted of a charge and it appears to the judge that the defendant was factually innocent, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case, as specified.

This bill would require a judge, whenever a person is convicted of a charge and the conviction is set aside based upon a determination that the person was factually innocent, to order that the records in the case be sealed, including any record of arrest or detention, upon written or oral motion of any party in the case or the court. By imposing new duties on local officials regarding the sealing of records, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 340.6 of the Code of Civil Procedure is amended to read:

340.6. (a) An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. If the plaintiff is required to establish his or her actual innocence for an underlying criminal charge as an element of his or her claim, the action shall be commenced within two years after the plaintiff achieves postconviction exoneration in the form of a final judicial disposition of the criminal case. In no event shall the time for commencement of legal action exceed four years except that the period shall be tolled during the time that any of the following exist:

(1) The plaintiff has not sustained actual injury;

(2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred;

(3) The attorney willfully conceals the facts constituting the wrongful act or omission when such facts are known to the attorney, except that this subdivision shall toll only the four-year limitation; and

(4) The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action.

(b) In an action based upon an instrument in writing, the effective date of which depends upon some act or event of the future, the period of limitations provided for by this section shall commence to run upon the occurrence of such act or event.

SEC. 2. Section 851.8 of the Penal Code is amended to read:

851.8. (a) In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. A copy of the petition shall be served upon the prosecuting attorney of the county or city having jurisdiction over the offense. The law enforcement agency

having jurisdiction over the offense, upon a determination that the person arrested is factually innocent, shall, with the concurrence of the prosecuting attorney, seal its arrest records, and the petition for relief under this section for three years from the date of the arrest and thereafter destroy its arrest records and the petition. The law enforcement agency having jurisdiction over the offense shall notify the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this subdivision, of the sealing of the arrest records and the reason therefor. The Department of Justice and any law enforcement agency so notified shall forthwith seal their records of the arrest and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. The law enforcement agency having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest which they have given to any local, state, or federal agency or to any other person or entity. Each agency, person, or entity within the State of California receiving the request shall destroy its records of the arrest and the request, unless otherwise provided in this section.

(b) If, after receipt by both the law enforcement agency and the prosecuting attorney of a petition for relief under subdivision (a), the law enforcement agency and prosecuting attorney do not respond to the petition by accepting or denying the petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the superior court that would have had territorial jurisdiction over the matter. A copy of the petition shall be served on the law enforcement agency and the prosecuting attorney of the county or city having jurisdiction over the offense at least 10 days prior to the hearing thereon. The prosecuting attorney and the law enforcement agency through the district attorney may present evidence to the court at the hearing. Notwithstanding Section 1538.5 or 1539, any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or

any other evidence submitted by the parties which is material, relevant and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this section shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, then the court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records of the arrest and the court order to seal and destroy the records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy such records. The court shall also order the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity. Each state or local agency, person or entity within the State of California receiving such a request shall destroy its records of the arrest and the request to destroy the records, unless otherwise provided in this section. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

(c) In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court that dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of the petition shall be served on the prosecuting attorney of the county or city in which the accusatory pleading was filed at least 10 days prior to the hearing on the

petitioner's factual innocence. The prosecuting attorney may present evidence to the court at the hearing. The hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

(d) In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the prosecuting attorney, grant the relief provided in subdivision (b) at the time of the dismissal of the accusatory pleading.

(e) Whenever any person is acquitted of a charge and it appears to the judge presiding at the trial at which the acquittal occurred that the defendant was factually innocent of the charge, the judge may grant the relief provided in subdivision (b).

(f) In any case where a person who has been arrested is granted relief pursuant to subdivision (a) or (b), the law enforcement agency having jurisdiction over the offense or court shall issue a written declaration to the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which the person was arrested and that the arrestee is thereby exonerated. Thereafter, the arrest shall be deemed not to have occurred and the person may answer accordingly any question relating to its occurrence.

(g) The Department of Justice shall furnish forms to be utilized by persons applying for the destruction of their arrest records and for the written declaration that one person was found factually innocent under subdivisions (a) and (b).

(h) Documentation of arrest records destroyed pursuant to subdivision (a), (b), (c), (d), or (e) that are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the arrestee. The arrestee shall be notified in writing by the law enforcement agency having jurisdiction over the offense of the sealing and destruction of the arrest records pursuant to this section.

(i) (1) Any finding that an arrestee is factually innocent pursuant to subdivision (a), (b), (c), (d), or (e) shall not be admissible as evidence in any action.

(2) Notwithstanding paragraph (1), a finding that an arrestee is factually innocent pursuant to subdivision (a), (b), (c), (d), or (e) shall be admissible as evidence at a hearing before the California Victim Compensation and Government Claims Board.

(j) Destruction of records of arrest pursuant to subdivision (a), (b), (c), (d), or (e) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest, and the record shall be prepared again so that it appears that the arrest never occurred. However, where (1) the only entries on the record pertain to the arrest and (2) the record can be destroyed without necessarily affecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(k) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of the records has received a certified copy of the complaint in the civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil actions, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties and any other person authorized by the court. Immediately following the final resolution of the civil action, records subject to subdivision (a), (b), (c), (d), or (e) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e).

(*l*) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petitioner under this section for an arrest shall also be available for an arrest which has

been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) This section shall not apply to any offense which is classified as an infraction.

(o) (1) This section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence that is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate division of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a court of appeal. A judgment of a court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any decision referred to in this subdivision which is a judgment by the appellate division of the superior court shall be appealed by the Attorney General.

(p) A judgment of the court under subdivision (b), (c), (d), or (e) is subject to the following appeal path:

(1) In a felony case, appeal is to the court of appeal.

(2) In a misdemeanor case, or in a case in which no accusatory pleading was filed, appeal is to the appellate division of the superior court.

SEC. 3. Section 851.86 is added to the Penal Code, to read:

851.86. Whenever a person is convicted of a charge, and the conviction is set aside based upon a determination that the person was factually innocent of the charge, the judge shall order that the records in the case be sealed, including any record of arrest or detention, upon written or oral motion of any party in the case or the court, and with notice to all parties to the case. If such an order is made, the court shall give the defendant a copy of that order and inform the defendant that he or she may thereafter state he or she was not arrested for that charge and that he or she was not convicted of that charge, and that he or she was found innocent of that charge by the court. The court shall also inform the defendant of the availability of indemnity for persons erroneously convicted

pursuant to Chapter 5 (commencing with Section 4900) of Title 6 of Part 3, and the time limitations for presenting those claims.

SEC. 4. Section 1203.95 is added to the Penal Code, to read:

1203.95. (a) Any person whose criminal conviction has been vacated by a court, either on direct appeal or a petition for habeas corpus, and the person has been released from custody as a result of that court decision, is eligible for services under this section.

(b) Whenever any person serving a state prison sentence has been released from custody as a result of a court decision vacating his or her criminal conviction, all of the following shall occur:

(1) The Department of Corrections and Rehabilitation shall provide the wrongfully convicted person with release funds pursuant to Section 2713.1.

(2) The clerk of the court in which the conviction was vacated shall send notice by certified mail to the agency designated to provide reentry assistance to any person described in subdivision (a) by the board of supervisors for the county in which the person intends to reside. The notice shall inform the agency that the person may be eligible for reentry assistance and shall provide contact information for the person and his or her attorney. The attorney representing the person shall assist the clerk in determining the county in which the person intends to reside. The clerk shall send the notice within two business days of the court's decision vacating the conviction. If, within two business days, the clerk has not been able to identify the county in which the person intends to reside, then the clerk shall send the notice to the county of conviction.

(3) The agency designated by a county board of supervisors shall secure a case manager for the person within 14 days of receiving notice of the person's release, unless the person declines the assistance of a case manager or the agency determines that the person intends to reside in another county. The agency shall also secure a case manager within 14 days of receipt of a written request for services from either a person described in subdivision (a) who initially declined the assistance of a case manager, if the request is received by the agency within one year of his or her release from custody, or a person described in subdivision (a) who was released between January 1, 2002, and the effective date of this statute. The case manager shall assist the person for two years from the date of assignment. The case manager shall not be a parole agent, probation officer, or other law enforcement officer, and shall not

be a staff person of the Department of Corrections and Rehabilitation. If the agency determines that the person intends to reside in another county, the agency shall immediately send notice by certified mail to that other county's designated agency notifying the agency that the person may be eligible for reentry services.

(c) Upon the request of a person described in subdivision (a), a local county social service agency shall provide the person with the assistance of a case manager for a period of two years from the date of the assignment of the case manager to the person.

(d) The case manager for the person shall do all of the following:

(1) Conduct a risk and needs assessment for the person and his or her family.

(2) In consultation with one or more organizations that advocates for the wrongfully convicted, develop a reentry plan for the person.

(3) For two years, assist the person and his or her family by identifying and referring him or her to needed services, including, but not limited to, housing, psychological counseling, medical services, and vocational training, based on the reentry plan. The case manager shall refer the person to service providers that already provide services in the county. Nothing in this act requires the local county social services agency to fund additional services specifically for a person described in subdivision (a), beyond provision of the case manager, though a county social services agency is not prohibited from doing so if it chooses.

(e) By April 1, 2009, every county board of supervisors shall designate an agency to assist a person described in subdivision (a) with reentry services. The designated agency may be the county social services department, the county health department, or a qualified nonprofit organization. The designated agency may not be a probation department or a law enforcement agency. The board of supervisors shall post contact information about the designated agency on the county Web site and shall send the name and contact information of the designated agency to the Administrative Office of the Courts.

SEC. 5. Section 4901 of the Penal Code is amended to read:

4901. A claim under Section 4900, accompanied by a statement of the facts constituting the claim, verified in the manner provided for the verification of complaints in civil actions, must be presented by the claimant to the California Victim Compensation and Government Claims Board within a period of two years after

judgment of acquittal or discharge given, or after pardon granted, or after release from imprisonment, and no claim not so presented shall be considered by the California Victim Compensation and Government Claims Board.

SEC. 6. Section 4903 of the Penal Code is amended to read:

4903. On such hearing the claimant shall introduce evidence in support of the claim, and the Attorney General may introduce evidence in opposition thereto. The claimant must prove the facts set forth in the statement constituting the claim, including the fact that the crime with which he or she was charged was either not committed at all, or, if committed, was not committed by him or her, the fact that he or she did not, by any act or omission on his or her part, intentionally contribute to the bringing about of his or her arrest or conviction for the crime with which he or she was charged, and the pecuniary injury sustained by him or her through his or her erroneous conviction and imprisonment. For purposes of this chapter, when determining whether the claimant intentionally contributed to the bringing about of his or her arrest or conviction, the factfinder shall not consider statements obtained from an involuntary, false confession or involuntary plea.

SEC. 7. Section 4904 of the Penal Code is amended to read:

4904. If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and that the claimant did not, by any act or omission, intentionally contribute to the bringing about of his or her arrest or conviction for the crime with which he or she was charged, and that the claimant has sustained pecuniary injury through his or her erroneous conviction and imprisonment, the California Victim Compensation and Government Claims Board shall report the facts of the case and its conclusions to the next Legislature, with a recommendation that an appropriation be made by the Legislature for the purpose of indemnifying the claimant for the pecuniary injury. The amount of the appropriation recommended shall be a sum equivalent to one hundred dollars ($100) per day of incarceration served subsequent to the claimant's conviction. This daily rate shall be adjusted annually, commencing January 1, 2009, to reflect the cost of living in the year of the appropriation pursuant to Section 11453 of the Welfare and Institutions Code. The appropriation shall not

be treated as gross income to the recipient under the Revenue and Taxation Code.

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2008

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Governor